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MULTIPLE AWARD CONTRACTS FOR SERVICES

Report No. D-2001-189

September 30, 2001

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Acronyms

AFB	Air Force Base
ATSP2	Advanced Technology Support Program II
CECOM	U.S. Army Communications and Electronics Command
DMEA	Defense Microelectronics Activity
DSSW	Defense Supply Service Washington
FAR	Federal Acquisition Regulation
FASA	Federal Acquisition Streamlining Act
FORSCOM	United States Army Forces Command
SPAWAR	United States Navy Space and Warfare Systems Command



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September 30, 2001

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION,
TECHNOLOGY, AND LOGISTICS
ASSISTANT SECRETARY OF THE AIR FORCE
(FINANCIAL MANAGEMENT AND COMPTROLLER)
DIRECTOR, DEFENSE FINANCE AND ACCOUNTING
SERVICE
DIRECTOR, DEFENSE MICROELECTRONICS
ACTIVITY
NAVAL INSPECTOR GENERAL
AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: Audit Report on Multiple Award Contracts for Services
(Report No. D-2001-189)

We are providing this report for review and comment. We considered management comments on a draft of this report when preparing the final report.

DoD Directive 7650.3 requires that all recommendations be resolved promptly. The Under Secretary of Defense for Acquisition, Technology, and Logistics; Army; and the Navy did not provide comments to the draft of this report. The Air Force, Defense Finance and Accounting Service, and the Defense Microelectronics Activity provided comments. Although many of the comments were concurrences and proposed positive actions, other comments did not fully address the recommendations or did not propose any corrective actions. We request the Under Secretary of Defense for Acquisition, Technology, and Logistics; Army; and the Navy provide comments on the recommendations. We request the Air Force, Defense Finance and Accounting Service, and the Defense Microelectronics Activity reconsider their comments on the recommendations and provide additional comments. Please provide comments by October 30, 2001. A summary of the recommendations requiring additional comments is in the "Management Comments Required" section at the end of the finding.

Questions on the audit should be directed to Mr. Terry L. McKinney at (703) 604-9288 (DSN 664-9288) (tmckinney@dodig.osd.mil) or Mr. Bruce A. Burton at (703) 604-9282 (DSN 664-9282) (bburton@dodig.osd.mil). See Appendix C for the report distribution. The audit team members are listed inside the back cover.

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Office of the Inspector General, DoD

Report No. D-2001-189

(Project No. D2001CF-0057)

September 30, 2001

Multiple Award Contracts for Services

Executive Summary

Introduction. The audit was initiated to follow up on actions taken by the Under Secretary of Defense for Acquisition, Technology, and Logistics in response to Audit Report No. 99-116, "DoD Use of Multiple Award Task Order Contracts." During that audit, we identified 66 of 124 task orders that were issued on a sole-source basis without providing contractors a fair opportunity to be considered. To determine the extent of the problem and the progress being made, the Under Secretary of Defense for Acquisition, Technology, and Logistics requested that each Military Department identify 10 multiple award task order situations and provide specific information on each multiple award situation on a semiannual basis for 1 year ending June 30, 2000. Multiple award contracting allows the Government to procure goods and services quickly, using streamlined acquisition procedures while obtaining the advantage of competition. The intent of multiple award contracts is to award contracts to technically well-qualified contractors in order to sustain competition and obtain the best value on task orders throughout the contract period.

We reviewed 423 multiple award task orders awarded in FYs 2000 and 2001, valued at \$451.4 million, at 15 contracting organizations. Our review covered 22 multiple award situations consisting of 84 contracts, with a ceiling amount of \$9.8 billion. These multiple award situations were selected from the ones included in the Under Secretary's analysis as well as multiple award contracts awarded by two other Defense organizations.

Objectives. The specific objective was to review the multiple award contract data collected by the Under Secretary of Defense for Acquisition, Technology, and Logistics from the Military Departments and assess the progress being made in providing contractors a fair opportunity to be considered.

Results. Contracting organizations continued to direct awards to selected sources without providing all multiple award contractors a fair opportunity to be considered. We found that 304 of 423 task orders (72 percent) were awarded on a sole-source or directed-source basis of which 264 were improperly supported. As a result, DoD was not obtaining the benefits of sustained competition and the reduced costs envisioned

when Congress provided the authority for multiple award contracts. Only 119 of 423 task orders were competed and only 82 (69 percent) of these orders received multiple bids. For details of the audit results, see the Finding section of the report.

Summary of Recommendations. We recommend that the Under Secretary of Defense for Acquisition, Technology, and Logistics change the Defense Federal Acquisition Regulation to direct contracting officials to allow all contractors to submit proposals on all task orders unless a valid exception is justified and signed. We also recommend that the Under Secretary instruct program and contracting office personnel to discontinue the practice of designating sources, establish a goal to obtain multiple proposals on at least 75 percent of task orders, and develop a system to measure progress in competition statistics.

We recommend that the Assistant Secretary of the Army for Acquisition, Logistics, and Technology; Assistant Secretary of the Navy for Research, Development, and Acquisition; Assistant Secretary of the Air Force (Acquisition), Director, Defense Finance and Accounting Service, and Director, Defense MicroElectronics Activity:

- instruct contracting officials that adequate planning requires an assessment of the suitability of the work under consideration, for a multiple award situation,
- require the senior contracting officials or ombudsman to sign each justification for exception when the contracting organization is below the DoD goal, and
- remind contracting officials that the use of logical follow-on only applies to the current multiple award contract and does not apply to prior contracts or subcontracts awarded outside the multiple award contract.

Management Comments. The Under Secretary of Defense for Acquisition, Technology, and Logistics; Army; and the Navy did not provide comments to the draft report. The Air Force and Defense Finance and Accounting Service concurred with two of the three recommendations, but did not agree with having a DoD goal for multiple proposal competition on task orders and having a senior contracting official or ombudsman attest to the validity of an exception for an award decision. They believed that the recommendation infringed on the contracting officers authority. The Director, Defense Microelectronics Activity stated that his process for determining whether an exception to fair opportunity exists is in accordance with FAR 16.505(b), and if a requirement meets the exception criteria, the benefits of using the multiple contract mechanism far outweigh the time and cost of a sole source award. The Director also disagreed with establishing goals for competition of task orders and review by the ombudsman if such goals are not being met. The Director agreed with providing additional training on proper use of exceptions for multiple award contracts. A discussion of management comments is in the Findings section of the report and the complete text is in the Management Comments section.

Audit Response. It has been over 2 years since our last report recommended additional training and oversight, and the amount of competition with multiple bids has apparently decreased for multiple award contracts. If contracting activities were achieving a prescribed level of competition, there is no reason to require an ombudsman to review

sole-source task orders. However, for the task orders in our review the amount of competition where multiple bids were received follows:

- Army 35 of 136 task orders or 26 percent,
- Navy 19 of 104 task orders or 18 percent,
- Air Force 25 of 121 task orders or 21 percent,
- Defense Finance and Accounting Service 3 of 13 task orders or 23 percent,
- DMEA 0 of 49 task orders or 0 percent.

The goal of multiple award contracts was obtaining the best value while sustaining competition throughout the contracts periods. Clearly, strong action is needed to improve on the anemic level of competition with multiple bids for task orders. The concern about limiting the contracting officers' discretion notwithstanding, an ombudsman is independent of the influence of the program offices and therefore provides additional controls over abuse of the multiple award contract. The Director for Acquisition Services, Defense Finance and Accounting Service concurred with two of the recommendations, however, his comments did not provide any plan of action for complying with the recommendations. The Director, Defense Microelectronics Activity comments for two of the recommendations were not fully responsive.

We request the Under Secretary of Defense for Acquisition, Technology, and Logistics; Army; and the Navy provide comments in response to the final report. We also request the Air Force; Director, Defense Finance and Accounting Service; and the Director, Defense Microelectronics Activity provide additional comments to each applicable recommendation. All comments should be provided by October 30, 2001.

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Background

The audit was initiated as a followup to actions taken by the Under Secretary of Defense for Acquisition, Technology, and Logistics (AT&L) in response to the Inspector General, DoD, Audit Report No. 99-116, "DoD Use of Multiple Award Task Order Contracts." Specifically, we were concerned that management's reluctance to establish performance measurements relating to multiple award contracts would result in little or no improvement in contract management.

In our previous report, we found that contracting officers directed work to preferred contractors without allowing multiple award contractors a fair opportunity to be considered on 66 of 124 task orders (53 percent). We recommended that the Under Secretary (AT&L) establish a 90 percent competition goal for task orders on multiple award contracts. The Under Secretary disagreed, and as a compromise, agreed to conduct a 1-year test.

The Under Secretary (AT&L) requested that each Military Department identify 10 multiple award task order situations and provide information on a semiannual basis for 1 year to assess competitive progress. For each multiple award situation, the Under Secretary (AT&L) requested:

- the number of contracts awarded,
- the general nature of services procured,
- the number of task orders awarded during the period,
- the number of competitive solicitations for task orders issued in the period,
- the number of offers submitted for each competitive solicitation,
- the number of task orders awarded during the period on the basis of "fair opportunity to be considered" without the issuance of a competitive solicitation, and
- the number of uses of exceptions cited in FAR 16.505(b) (2), and the number of times each exception was used.

The first reports were provided on March 7, 2000, and the latest on October 20, 2000. The study consisted of 25 sites, 53 multiple award situations, and 5,546 task orders. The Under Secretary (AT&L) was to analyze the data to evaluate the extent of the problem and take appropriate action.

Multiple Award Task Order Contracts. The Federal Acquisition Streamlining Act (FASA) of 1994 authorizes agency heads to enter into multiple award delivery and task order contracts for the procurement of goods and services. Multiple award contracts occur when two or more contracts are awarded from one solicitation. This allowed the Government to procure goods and services quickly, using streamlined acquisition procedures while obtaining the advantage of competition. The intent of multiple award contracts is to establish a group of

prequalified contractors that are technically capable of performing the work, to sustain competition among the contractors, and obtain the best value on task orders throughout the contract period. Because multiple award contracts contain broad statements of work and provide the contractor's little assurance on actual amounts of orders that will be received, it is crucial that the initial selection process focus on technical issues. This process allows contractors to compete on relatively equal footing. When specific task orders are developed with defined requirements, cost should be a substantial factor in the selection process. Using the initial selection process as justification that adequate competition has occurred serves little purpose when so many uncertainties exist in the initial process. FASA establishes a general preference for using multiple awards and requires that the implementing Federal Acquisition Regulation (FAR) ". . . establish a preference for awarding, to maximum extent practicable, multiple task or delivery order contracts for the same or similar services or property." The FASA mandates the use of multiple award contracts for advisory and assistance service contracts exceeding \$10 million and 3 years duration.

Changes to Contracting Process. FASA authorizes the use of broad statements of work, limits contractor protests, and mandates that multiple awardees have a fair opportunity to be considered for orders in excess of \$2,500.

Statements of Work. Statements of work for multiple award contracts can be general in describing the scope, nature, complexity, and purpose of the services or supplies. However, statements of work for individual task or delivery orders must specifically describe the work to be performed, and the work specified on task or delivery orders must be within the scope of the general contract statement of work.

Contractor Protests. Multiple awardees cannot protest awards of task or delivery orders except on the grounds that the order increases the scope, period, or maximum value of the contract. As a result, contractors cannot protest the award of orders based on unfairness or lack of competition.

Fair Opportunity to be Considered. Multiple awardees must have a fair opportunity to be considered for awards of orders in excess of \$2,500 unless a valid exception exists. However, FASA allows agencies considerable latitude to define what constitutes a fair opportunity. Contracting officers have broad discretion to determine how orders are awarded, provided that selection criteria are set forth in the solicitation and contract. As a result, contracting officers must use prudent business judgment to consider past performance, quality of deliverables, cost control, price or cost, and other relevant factors. The FASA and FAR prohibit allocation of orders among the multiple awardees.

FY 2002 National Defense Authorization Act

On September 12, 2001, the Senate Armed Services Committee released S.1416 as its version of the FY 2002 National Defense Authorization Act. The bill includes requirements for establishing a management structure for procurements of services and data analysis. The bill requires establishment of threshold approval levels for any service contract or task order placed with DoD or

non-DoD activities that is not performance based. The bill also requires tracking competition and small business awards for all service contracts and task orders. Further, it requires establishing a program review structure with dollar thresholds for when senior procurement executives should review a procurement for services. The changes in statute were directed because of multiple audit reports from the General Accounting Office and Inspector General, DoD, about the contracting problems for the \$52 billion of annual service contracts. The bill established savings goals of 3 percent by 2002, increasing to 10 percent by 2011, that the Department must achieve for service contracts.

For multiple award contracts the bill establishes a requirement that task and delivery orders in excess of \$50,000 must be competed unless a determination in writing is made that competition cannot be achieved because of a valid exception. In addition, each military department and defense agency is required to report how often waivers are granted to the requirement for competition.

Objectives

The overall objective was to follow up on actions taken by the Under Secretary of Defense (AT&L) in response to Report No. 99-116, "DoD Use of Multiple Award Task Order Contracts." Specifically, we reviewed the accuracy of multiple award contract data collected by the Under Secretary of Defense (AT&L) from the Military Departments to assess progress in using these types of contracts. See Appendix A for discussion of audit scope and methodology, and prior coverage related to audit objectives.

Use of Multiple Awards

Contracting organizations continued to direct task order awards to selected sources without providing all multiple award contractors a fair opportunity to be considered. Of the 423 task orders that we reviewed, 304 (72 percent) were awarded on a sole-source or directed-source basis, of which 264 were awarded improperly. These awards were improper because:

- contracting officials abused the “broad discretion” portion of the FAR for task order awards under multiple award contracts,
- contracting officials allowed “exception” claims without adequate supporting documentation and succumbed to program office and internal pressures to generate business for their multiple award contracts,
- contracting officials did not adequately plan work to ensure that it was suitable for multiple awards, and
- OSD management did not properly monitor, evaluate, and analyze data collected from Military Departments for multiple award contracts.

The other 119 orders were competed with only 82 (69 percent) receiving multiple bids. As a result, contracting organizations were not achieving the cost saving benefits of multiple award contracts because of the lack of sustained competition and the absence of a measurable basis for improvement. Only 49 actions were awarded to the low bidder. We determined that only 3 of 15 contracting organizations used multiple award contracts correctly.

Criteria

Federal Acquisition Regulation. The FAR, part 16.5 implements the portion of FASA regarding multiple award contracts. FAR 16.505, “Ordering,” states that awardees will have a fair opportunity to be considered for orders worth more than \$2,500 unless certain exceptions apply. These exceptions are:

- the agency need for the supply or service is so urgent that providing a fair opportunity would result in unacceptable delays,
- only one contractor is capable of providing the supply or service because the supply or service is unique or highly specialized,

-
- the delivery or task order is a logical follow-on to a previously issued order, provided all awardees were provided a fair opportunity to be considered for the original order, or
 - an order is placed with a contractor to satisfy a minimum guarantee.

The regulation does not define “. . . a fair opportunity to be considered.” Instead, individual contracting officers are allowed to use broad discretion when determining that a fair opportunity was given. While the regulation states that contracting officers may make awards without contacting each contractor, the contracting officer must consider factors such as past performance on earlier tasks under the multiple award contract, quality of deliverables, price or cost under each order, and other factors.

Order Placement Procedures. In addition to requiring certain considerations when awardees are not contacted, the FAR does not allow preferred source designations. In August 1999, FAR part 16.505(b) was added and states:

However, methods, such as allocation or designation in any way of any preferred awardee(s), that would result in less than fair consideration being given to all awardees prior to placing each order, are prohibited.

FAR 16.505(b)(5) also requires the head of the agency to designate a task order contract ombudsman. The ombudsman must ensure that each contractor is afforded a fair opportunity to be considered. The ombudsman must be a senior agency official who is independent of the contracting officer.

The Deputy Director, Office of Management and Budget, issued a memorandum for the President’s Management Council on May 21, 1999, concerning multiple award contracts. The memorandum was issued after Inspector General, DoD, Report No. 99-116 found multiple award situations were not being used effectively, and that contracting officials and program offices were designating preferred sources without fair considerations for other awardees. To emphasize the prohibition of designated sources, the memorandum states:

...we moved to strengthen the use of MACs and the fair opportunity process by discontinuing the practice of designating contract holders as a preferred source for specific work.

This change was created to ensure that multiple awards were being used in the most effective and beneficial manner. These awards would occur only when all awardees were given fair consideration prior to the issuance of each task order.

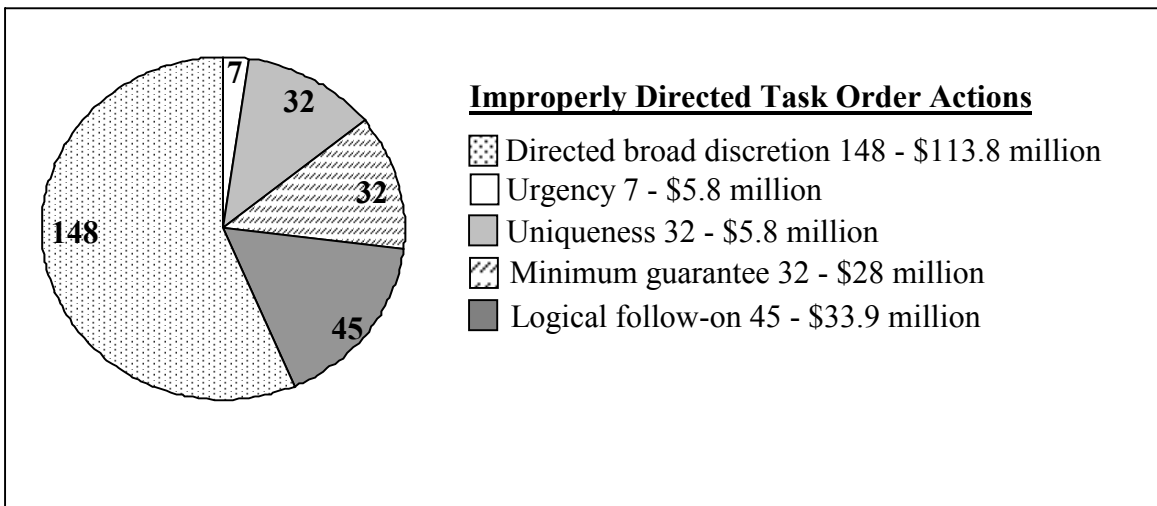
Directed Awards

Of the 423 task orders that we reviewed, 304 (72 percent) were awarded on a sole-source or directed-source basis. The 304 task orders, valued at \$312.2 million, were awarded as sole-source or directed-source orders based on the contracting officers’ broad discretion in applying fair opportunity procedures or as exceptions to the requirement for all contractors to be offered a fair opportunity on each order. Broad discretion awards consisted of documented and undocumented

decisions to award to a contractor without allowing others to offer proposals. Orders were only supposed to be awarded as sole source if a FAR 16.505 exception applied. Since multiple award contracts were designed to allow streamlined awards between contractors with strong technical skills, unique and urgent exceptions should have been rare. However, we found that unique and urgent exceptions were routinely used. See Appendix B for the complete listing of the 423 task orders reviewed. The 159 valid actions were either competed task orders or cited exceptions that were properly supported. The following is a break down of the 159 task orders, valued at \$264.1 million:

- 37 competitive one-bid,
- 33 competitive multiple bids with awards to other than the low bidder,
- 49 competitive multiple bids with awards to the low bidder, and
- 40 exceptions.

The following figure depicts the 264 improperly directed task orders, valued at \$187.3 million, deemed invalid. We determined that invalid task orders included those that should not have been awarded as sole-source or directed-source actions either because they violated the FAR requirements or were questionable because they were not properly supported.



Broad Discretion Authorized

FAR 16.505 authorizes contracting officers to exercise broad discretion when awarding task orders under multiple award contracts provided that a fair opportunity to be considered is provided to all interested parties. However, despite the vagueness of the criteria, the FAR requires that contracting officers consider the cost of the task order as one of the factors in providing a fair opportunity to be considered. Contracting officers abused this broad discretion by awarding task orders even though they failed to support their awareness of pricing

for all contractors not contacted before the order was awarded. When we reviewed task orders where contractors were not contacted to submit proposals, we found no task orders that showed that the contracting officer knew the labor mix or labor hours that contractors may have proposed. Often, these selections were requested by program office personnel or because the contractor had been an incumbent from a prior contract.

Directed with Documentation. Seventy-six task orders, valued at \$72 million, were directed to specific contractors using various forms that provided limited information and provided no justification to support a sole-source award. The source selection forms used terms such as integrated assessment, source selection memorandum, or in-house consideration. The forms also cited fair opportunity, but did not address cost consideration and provided unconvincing rationale for the selection. Contracting officials at Brooks Air Force Base (AFB), Texas, used contractor source selection memorandums instead of issuing competitive solicitations to award 42 task orders. Essentially, the contracting officer issued a sole-source award to a contractor he deemed most suitable. The award was based on his subjective interpretations on prior history, quality, expertise, or other factors. The documentation did not support a sole-source award and cost was not included as an evaluation factor for contractor selection. For example, 13 sole-source task orders were awarded at Brooks AFB to provide environmental remediation at various worldwide locations. The contracting officer selected a contractor using contractor proximity to the worksite and technical ability as evaluation factors instead of seeking proposals. Price was not considered in the selection decision. Contracting officials at the United States Army Forces Command (FORSCOM) used in-house consideration forms to direct orders under \$3 million, an arbitrary amount decided upon and agreed to by the contractors. The \$3 million amount was stated on the in-house consideration form. Section 2304c, title 10, United States Code, establishes the requirement to give all contractors fair opportunity to be awarded task orders in excess of \$2,500 on multiple award contracts. This requirement was incorporated into FAR part 16.505. The validity of any order issued under this multiple award should be questioned because it violated the law. The organization ignored the law and established a higher arbitrary amount in order to select a contractor without allowing other contractors to submit proposals. In addition to this violation, contracting officials did not address cost as a factor for contractor selection.

Directed without Documentation. Seventy-two orders were directed to a specific contractor without claiming any of the four exceptions or providing any documentation to support a sole-source award. In fact, procurement officials at the Defense Supply Service Washington (DSSW) stated that 50 task orders were not competed among the awardees and were instead directed to the contractor of choice. DSSW should have allowed contractors to submit proposals to permit valid best value analyses on all these orders. It appears that because the time to process awards of task orders under multiple awards was sufficiently short, all awardees should have been given an opportunity to submit proposals on new tasks.

Exceptions to Fair Opportunity

The FAR requires contracting officers to document in the contract file the rationale for placement and price of each order issued under multiple award contracts. However, contracting officers were citing exceptions to fair opportunity without providing adequate supporting documentation. In addition, contracting officers allowed program office personnel to establish claim exceptions to fair opportunity. The program offices cited exceptions based on their experience of working closely with incumbents from prior contracts or other preferred sources. Contracting officials allowed exceptions without question and succumbed to program office and internal pressures to generate business for these multiple award contracts.

Urgency Exceptions. The FAR authorizes contracting organizations to issue sole-source task orders if the need for the services or supplies is so urgent that providing a fair opportunity would result in unacceptable delays. **Eight** orders, valued at **\$5.8 million**, were awarded because of urgency. **Seven** of these orders were inappropriately justified. Documentation was inadequate and did not support the claim that other contractors could not perform the work within the specified time, or that there was even an urgent event. For example, at FORSCOM, one task order cited an urgent need for recurring services. The contracting officer claimed urgent caretaker services to maintain equipment while units were deployed as scheduled. Recurring services should be planned well in advance and should not require an urgent justification to issue a task order. Contracting officers at the Tank and Armaments Command (TACOM) and the Space and Missile Systems Center stated 14 days were required from the receipt of a well-written task order to the time of award. This short award time frame eliminated almost every urgent justification.

Unique Exceptions. If only one awardee can provide the unique supplies or services, contracting organizations may issue a sole-source task order. **Sixty-two** orders, valued at **\$126.2 million**, were awarded based on the unique exception. The justifications were inadequate in **32** cases. Contracting officials had no evidence that the other multiple award contractors were not capable of performing the tasks. At the Military Sealift Command, the unique exception was cited in order to develop a cargo securing manual, based on guidance from the American Bureau of Shipping. The other awardee was not considered for this task because of the incumbent contractor's prior experience. Even though prior experience can be used as justification, the contracting officer should not accept program office justification that an incumbent contractor is the only capable source without convincing support.

In addition to a contractor's unique capabilities, the contracting officer must demonstrate that the work is highly specialized. FORSCOM awarded **11** task orders using the unique exception, but no documentation was provided to indicate that no other contractor could do the work. One task order used the unique exception to direct the order to a preferred subcontractor. Contracting officials did not consider other contractor capabilities but selected a contractor because its subcontractor was an "... incumbent under another agency's expiring contract on their team." The one-paragraph justifications for the **11** orders had no convincing support to justify use of the unique exception. These justifications even contradict

earlier statements by contracting officials during the initial contractor evaluation that indicated all awardees were more than capable of performing the majority of the work. The Government official stated that “. . . the number and quality of offers received exceeded its [Government’s] expectations,” therefore the number of contracts awarded was increased because of the high quality of the offers submitted. This situation exemplifies a multiple award situation that is ideal for competitive activity because of the superior technical qualifications of all awardees. Instead of competing the orders and receiving benefits from reduced prices and best value, FORSCOM awarded task orders to preferred and incumbent contractors based on justifications that did not fit the situation.

Logical Follow-On Exceptions. FAR 16.505 authorizes contracting organizations to issue sole-source task orders if they are logical follow-on task orders to orders issued previously under the contract, provided all awardees were given a fair opportunity to be considered for the original order. **Forty-five** of **53** orders, valued at **\$33.9 million**, were awarded as logical follow-ons, but were not valid. In each case, contracting organizations continued to erroneously claim that the task orders were “follow-ons” to prior orders where all contractors were provided a fair opportunity to be considered. The original orders were all issued on a sole-source basis, and in some cases were related to contracts that were not under the current multiple award. For example, the Navy Space and Warfare Systems Command (SPAWAR), and the Defense Financial Accounting Service awarded **14** orders as logical follow-on orders to task orders awarded under prior contracts. These **14** orders did not meet the FAR exception requirement and were directed to the incumbent contractor. A contracting specialist at SPAWAR admitted that **13** orders were not “. . . considered follow-on based upon the Government’s traditional interpretation,” and later stated, “. . . tasking is ongoing and the potential for costs will rise if service is disrupted by competition.” These statements exemplified contracting officials’ abuse of the exception criteria to award task orders to specific contractors. Contracting officials, in some cases, became aware that the logical follow-on exception did not comply with the FAR and attempted to reclassify it as a unique source.

Guaranteed Minimum Exceptions. **Thirty-three** task orders, valued at **\$28.4 million**, were awarded sole-source to satisfy the minimum guaranteed contract amount. **Twelve** of these orders, valued at **\$19.4 million**, were not valid minimum guaranteed exceptions, but were awarded to satisfy internally established small business goals. FORSCOM directed these orders to specific small business contractors by claiming the minimum guarantee exception. Officials at Tinker AFB awarded **one** task order, valued at \$694,242, as a minimum guarantee in order to award the order to a preferred source. The contracting official was aware the minimum guarantee exception was being abused but submitted to the pressure of the program office and awarded the task order despite documenting “I don’t think it flies but I’m told this is being rushed . . .” The contracting officer initially planned to give all contractors a fair opportunity for award; however, when the program office made demands to expedite the award, the contracting officer then decided to use the minimum guarantee and stated, “We get to take that exception once a year, might as well make it a good one.”

The other **19** orders deemed inappropriate were awarded as the first task order of the contract in order to satisfy minimum guarantee requirements. The regulation

authorizes contracting organizations to place an order with a contractor to satisfy a minimum guarantee but the regulation does not state when to award a task order using the minimum guarantee exception. We maintain that a prudent business decision would be to use this exception when the contract period is nearing completion and the contractor has not yet been awarded enough task orders to meet the minimum requirements. This process would allow contractors to receive competitive awards that reach or exceed the minimum guarantee and would also allow the Government to receive the benefits of competition. The DSSW policy chief stated that there are no restrictions relative to when minimum guarantees can be used; however, he agreed that there could be benefits to competing the task orders. Nevertheless, contracting organizations cited the FAR and persisted on issuing minimum guarantees during the early stages of the contract for dollar amounts significantly higher than the minimum guarantee. For example, SPAWAR issued a task order for \$2.1 million to satisfy the minimum guarantee of \$807,852. This order was awarded less than 2 months after the contract was awarded—for 161 percent higher than the minimum guaranteed amount. If the contractors competed for this order, a competitive price could have been obtained, and the minimum guaranteed amount for one contractor met. Competition benefits were lost when this high-dollar task order was awarded on a sole-source basis. We believe that where insufficient competition was occurring, the head of the contracting organization or the task order ombudsman should sign each justification for an exception from fair opportunity to be considered.

Pressures and Influences

Contracting Officer Duties. Contracting officers have the contracting authority and are ultimately responsible for selecting the best source for award of task orders under the multiple award contracts. However, during our review, contracting officers at selected offices were not actively and aggressively assuming this responsibility. Several contracting officers did not even believe that it was their decision to make and routinely accepted the recommended source. At Tinker AFB, Oklahoma, the program office had acted as the selection authority and cited the exceptions to fair opportunity to award to a specific contractor. The contracting officer provided no input into this decision other than to issue the task order. When questioned, the contracting officer stated that it was not his place to determine which exception should be used. At DSSW, the contracting officer stated that the customer had extensive knowledge of the program and therefore was qualified to make the selection decision. It is the contracting officer's responsibility to make the final selection decision and document the rationale for the placement and price of each order. In this regard, we believe the contracting officer needs to have sufficient technical support to make informed independent decisions.

Program Office Influence and Internal Pressure. Program office influence and internal pressure to market the contracting organization's multiple award contracts to other organizations also led to misuse of these contract mechanisms. Program offices continued to designate preferred sources and used these contracts to quickly award orders to contractors under situations that essentially amounted to sole-source procurements. **Ten of the 15** contracting organizations awarded task orders on a directed-source basis because the program offices preferred to work with a specific contractor, usually the incumbent from a prior contract or task.

Designation of a preferred contractor occurred in spite of the FAR part 16.505 change and the May 1999 Office of Management and Budget memorandum stating the allocation or designation of any awardee is not an acceptable ordering method. Contracting officials at the Space and Missile Systems Center agreed that program offices had too much influence in the final selection decision and often limited competition in order to work with a specific contractor. One contracting official stated that if the program office did not officially direct the contracting officials as to which contractor to select for award, contracting officials received unofficial direction. Conversely, the contracting officer at the Communications Electronics Command (CECOM), where the use of multiple award contracting was more successful, did not allow the program offices to influence the decision to compete the orders. The contracting officer notified the customers in advance that all orders would be competed and as a result some customers decided to obtain the services elsewhere.

The problems of program office source designation were compounded by the fact that the program office was, in most cases, responsible for technical evaluations and source selection recommendations. As a result, contracting officers rarely raised questions and awarded to the preferred source in each case. At least one Air Force contracting officer indicated that pressure was more explicit and that several program offices had threatened to take their business elsewhere if they could not have specific contractors:

Some of the SPOs [program offices] wanted specific contractors and if they didn't get them they threatened to pull out of TAMS [Technical and Acquisition Management Support] and go elsewhere such as GSA.

We noted these same pressures exerted by program offices on contracting personnel during our previous audit.

Contracting officials also felt internal pressure to generate business for their multiple award contracts to justify the efforts put into the award process. Contracting officials at FORSCOM felt a pressure to compete their multiple award contracts with multiple award contracts at other contracting activities and stated:

Supposedly, TACOM is marketing their contract, "Focused Sustainment," at OUR installations...Additionally, they have a second log support services draft...and it will provide more "competition" for LOGJAMSS. Secondly, rumor also has it that the Tinker AFB contracting contingent is coming out here on 8-9 November to talk to FMMC – I would guess that they are trying to lobby for our continued business – word is that they are very concerned about LOGJAMSS.

There are substantial marketing efforts ongoing that are directed against LOGJAMSS. To ensure the success of our contract, we need to ensure that we market it effectively. I understand that the contractors who are awarded the 6 contracts will do their share of drum beating, but I assume FORSCOM will have to do their share.

There was a strong push to market this multiple award rather than issuing task orders to meet known requirements. Allowing program offices to designate

sources to gain their business or giving contractors uncompleted work that they brought to the multiple award, resulted in a pattern of sole-source actions that were contradictory to the purpose of the multiple award mechanism. For example, contracting officials at the Naval Supply Systems Command awarded task orders, justified as unique exceptions, based upon an agreement made with contract awardees. If the contractor believed that work needed to be completed, the contractor submitted a requirement for the work, along with a submission of cost and labor categories. The contracting officer issued an award to that contractor without question. These awards were never competed and when questioned about this, the contracting officer stated, "In the past we have agreed to give the task to whomever brings the task to us on this contract."

In order for the Government to receive the most benefit from multiple award type contracts, the program office, contracting officers, and financial and technical analysts must work as a team. The program office cannot be the customer, selection authority, and technical and cost analyst. At two locations, offices went as far as specifying the labor hours and labor categories that contractors should propose, which not only inhibited true competition, but stifled creativity and innovation by contractors proposing solutions. With a lack of sufficient independence, program offices created the opportunity for a biased contractor selection decision. Conversely, contracting officers cannot, in many cases, make the contractor selection decision without assistance from other analysts and program offices because contracting officers often lack the qualifications and time to make the most informed decision. We believe that if the program office interference continues to inappropriately affect the selection process, independent technical assistance, either developed within the contracting office or through an unbiased third party, such as the ombudsman at each contracting organization will be necessary.

Acquisition Planning

Initial Multiple Award Planning. Contracting organizations did not adequately plan and ensure that work was suitable for multiple award contracts. Even when outside pressures did not affect competitive aspects of the multiple awards, inadequate planning contributed to a lack of success. FAR 16.504 states:

The contracting officer must determine whether multiple awards are appropriate as part of acquisition planning. The contracting officer must avoid situations in which awardees specialize exclusively in one or a few areas within the statement of work, thus creating the likelihood that orders in those areas will be awarded on a sole-source basis.

Acquisition planning was not properly performed by **seven** contracting organizations, resulting in task orders being awarded on a sole-source basis. When awarding multiple award contracts, the type of work to be completed must be a prime factor in deciding whether multiple award type contracts are appropriate. Contracting officers should not use the multiple award approach if only one contractor is capable of doing the work, or where tasks are so integrally related that only one contractor can reasonably perform the work throughout the life of the contract. The pattern of one-bid awards, high-bid awards, and unique exceptions demonstrated that acquisition planning was hasty and inadequate. At

Eglin AFB, Florida, contracting officials gave contractors the opportunity to compete on 70 orders. However, 66 orders were either competitive one-bids (44 task orders) or competitive multiple bids awarded to a contractor who was not the low bidder (22 task orders). These practices resulted in a multiple award situation that lost the advantages of competition. The inability to sustain competition and obtain the best value on task orders occurred because contracting officials awarded contracts to contractors that specialized in certain areas in the statement of work or awarded task orders to the incumbent contractor disregarding price. These factors limited the potential benefits and savings that can be achieved through proper use of multiple award contracts. Multiple award contracts should be offered and awarded to all technically capable contractors who are willing to bid on the majority of orders.

The Defense Microelectronics Agency (DMEA) awarded 30 task orders on a sole-source basis either because of the highly specialized nature of the work or due to contractor's proprietary data rights. It would not have been advantageous to have another contractor pay to obtain the data and rights. Therefore, this highly specialized work was not suitable for multiple award type contracts. In one instance, a contractor was determined to be the only capable source for the analysis of superconducting electronics technology because the contractor had been working with this program for the past 10 years. Acquisition planning would have revealed that the 10 year history for this unique type of work and the ownership of proprietary data for other work would not allow for competition among the awardees for the majority of the task orders. Separate sole-source contracts should have been awarded instead of multiple award contracts.

Procurement Planning. Contracting officials must determine whether a multiple award is appropriate and whether awardees are technically capable; however, all awardees are not required to be capable of performing every requirement as well as any other awardee. The premise for using a multiple awards contract is that contractors are technically qualified enough to maintain competition throughout the contract's period of performance. For 15 of the 22 multiple award situations, technical capabilities were the most significant evaluation factor for awardee selection. In an ideal situation, the contractors technical abilities should be similar enough to make price a primary factor in awarding task orders. Yet, 63 task orders were awarded with only one-bid or were awarded to the high bidder.

One success story was the CECOM. The contracting officials made a conscious decision before issuing the solicitation to award contracts only to those contractors that were technically capable of performing the work. Therefore, when orders were solicited, only one sole-source order was awarded because all contractors had the ability to perform the work and these situations resulted in two or more contractors competing for each order. Price was a significant factor in task order selection, and savings were achieved. CECOM avoided costs of \$23.6 million on the award of 12 orders, valued at \$55 million, when multiple contractors competed and orders were awarded to the low bidder.

The situation at the CECOM was different from other contracting organizations in that the majority of the orders were competed with orders awarded to the low bidder. For other contracting organizations, 145 orders were awarded to incumbent contractors or preferred sources either because of unique capabilities, follow-on work from a prior contractor for specialized services or tasks, or

contractor's technical capabilities. These orders were directed to an incumbent contractor or preferred source, despite the fact that at least one other awardee was capable of providing the same services or supplies. However, due to the customer's past experience with these contractors, other contractors were not given a fair opportunity. These known problems inhibited the success of these multiple award contracts. At the SPAWAR, one contract began as a single award until the contracting staff became aware that it should be a multiple award. Once that decision was made, it was decided to add the two unsuccessful contractors from the initial competition without resoliciting to seek other sources. In this case, since the contracting officer had already scheduled a single contractor, Resource Consultants Inc. over the other contractors, the selection process was flawed and planning was inadequate to ensure sustained competition among the three contractors. This lack of acquisition planning resulted in 27 of 28 orders being awarded with invalid justifications and only 4 orders being competitively awarded. In another case, three contractors were awarded multiple award contracts as a follow-on to a prior multiple award at the Space and Missile Systems Center. The two incumbents as well as a small business firm were awarded contracts. The contracting officer knew early in the process that the two incumbents did not intend to compete for each others' recurring requirements from the prior contract, which they estimated at approximately \$200 million. The small business, while desiring to compete, acknowledged that certain awards might be directed to the other contractors. Poor planning resulted in competition less likely to occur. In fact, 54 of 64 orders were awarded without competition to preferred sources including 52 awards to incumbents.

Task Order Planning. Poor planning was also evident during the task order competitions. Contractors competed for understated task order amounts that were based on incomplete requirements. Contract office personnel did not determine a realistic value of the entire task order requirement before award, which may have impacted the best value decision. For example, Eglin AFB competed a task order for an initial value of \$134,903. Through modification, this task order was increased to approximately \$1.5 million. A follow-on to this task order was later awarded which included 10 modifications for a total estimated value of \$21.4 million. Warner Robins AFB, Georgia, awarded an initial tasking for \$2.3 million and later issued additional follow-on task orders and modifications totaling \$13.6 million. The original competitions for both of these orders did not realistically address the amounts of the requirements and were examples of poor planning in addressing the scope of work for the task orders.

As a result of Sections 803 and 804 of the National Defense Authorization Act of Fiscal Year 2000, FAR changes are currently being proposed to provide broad guidance on planning for Governmentwide task order and delivery order contracting. Section 803 also proposes to strengthen use of multiple award contracts by requiring competition for orders awarded under multiple award contracts. The recommendations in our report are more detailed, and they address directing work to preferred sources and the use of exceptions to fair opportunity. Although the proposed FAR changes are a step in the right direction, these changes will not correct the problems noted in the report and do not alleviate the need for our recommendations.

OSD Action

The Office of the Under Secretary of Defense (AT&L) did not concur with our recommendation made in the 1999 report to set a goal of competing 90 percent of the Department's task orders. Instead, the office agreed to gather information from the Military Departments over a 1-year period and analyze the data to determine if competition on the task orders was adequate. However, after collecting this data, OSD did not conduct meaningful analysis of the information. In fact, OSD did not monitor or address obviously inconsistent and errant data submitted by contracting organizations, and did not include any follow up work on the data submitted. A modicum of analysis would have shown these errors, and illustrated that competitive activity for multiple award task orders had not improved since the previous audit. In the absence of any meaningful action, the poor practices continued for at least 2 years after the problem was first reported. If DoD does not develop a system to monitor multiple award contracts and associated task orders, the inappropriate practices will continue. The current DD 350 database cannot track these actions effectively and provides inadequate means to identify the number of task orders that are being competed under multiple award contracts.

Contracting officials did not perform a quality assessment of the information before submitting it to OSD. Officials at many sites could not state who was accountable for reporting this information to OSD. A number of sites reported incorrect information. There were several sites in which verification of the information reported to OSD was not possible. Of the 13 contracting organizations that reported information to OSD, 10 either reported incorrect information or information that could not be verified. For example, Naval Supply Systems Command/Fleet Technical Support Center Atlantic submitted data on 26 orders awarded under two contracts using the logical follow-on exception. However, there were 73 orders awarded during the period and, without task orders identifying the contract number and exception used, it was not possible to verify the statistical information. Officials at the Fleet Technical Support Center Atlantic were asked to reconcile the information submitted but could not identify the task orders for which the statistical data was related.

Successful Models

Two contracting organizations made efforts to improve the use of multiple awards since the prior audit and one contracting organization continues to use multiple awards effectively because of proper planning to establish the multiple award contracts and effectively use competition throughout the contract period. Naval Facilities Engineering Command, CECOM, and TACOM used multiple award contracts for the appropriate types of services and supplies to ensure competition throughout the contract period and avoid situations in which only one contractor was capable of performing the majority of work. In addition to proper initial acquisition planning, these organizations made conscious decisions to only award contracts to the most technically qualified contractors. This resulted in a group of highly qualified contractors willing to compete on the majority of orders. In those instances, since contractors were considered similar in abilities, price took on more importance and technical reviews were not used as often to justify higher

priced contractor awards. As a result, 25 orders worth \$66.3 million, were awarded to the lowest bidders and \$24.8 million in savings were achieved.

Conclusion

The underlying goal of multiple award contracting was to obtain the best value while sustaining competition throughout the contract period. Price competition was one of the best tools to ensure that the Government receives a fair and reasonable price. The intent of multiple award contracting was not to have a majority of orders awarded on a sole-source basis, but instead to use a streamlined acquisition process to achieve competition without increasing the Government's risk. However, the large percentage of sole-source orders demonstrates that most DoD contracting organizations continued to be increasing the risk to the Government and losing the benefits of price competition.

Recommendations, Management Comments, Audit Response, and Required Actions

1. We recommend that the Under Secretary of Defense for Acquisition, Technology and Logistics:

a. Instruct program and contracting office personnel to discontinue the practice of designating preferred sources in funding and/or selection documents and allow each contractor to be considered fairly based on the merits of their proposal.

b. Change the Defense Federal Acquisition Regulation to direct contracting officers to allow all contractors to submit proposals on each task order unless a valid exception is justified and signed. Instruct contracting officers that broad discretion cannot be used to eliminate sources from task order selections.

c. Establish a goal to maintain multiple proposals on at least 75 percent of task orders not granted an exception from fair opportunity to compete. This goal should be established for each contracting organization, and milestones should be established for ultimately increasing this goal to 90 percent in the future.

d. Develop a system to statistically track progress of each contracting organization's use of competition in awarding task orders. Each multiple award contract should be tracked for sole-source awards, competitive one-bid awards, and competitive multiple-bid actions.

2. We recommend that the Assistant Secretary of the Army for Acquisition, Logistics, and Technology; Assistant Secretary of the Navy for Research, Development, Acquisition; and the Assistant Secretary of the Air Force (Acquisition), Director, Defense Finance and Accounting Service, and Director, Defense MicroElectronics Activity:

a. Instruct contracting officials that adequate planning requires an assessment that a multiple award situation is suitable for the work under consideration. Work that includes proprietary rights or is otherwise so unique as to likely result in a pattern of unique exceptions or one-bid actions would not meet this criteria.

Air Force Comments. The Air Force concurred and stated it will publish a memorandum to the field emphasizing the need for acquisition planning, avoiding situations giving contractors exclusive access to one area of work and the need to maintain competition throughout contract performance.

Defense Finance and Accounting Service Comments. The Director for Acquisition Services concurred with the recommendation, stating that he agrees with instructing contracting officials that they must do adequate acquisition planning to assess that a multiple award situation is appropriate for the work under consideration.

Audit Response. The Director for Acquisition Services comments are not fully responsive. Although the Director concurred with the recommendation, he did not propose any action to comply with it. We therefore request that the Director provide additional comments in response to the final report providing proposed action for adopting this recommendation.

Defense Microelectronic Activity Comments. The Director nonconcurred, stating that the DMEA process is in accordance with FAR 16.505(b) that requires all potential awardees must be given a fair opportunity to be considered unless a statutory exception applies. The use of a statutory exception does not negate the validity of using the Advanced Technology Support Program II (ATSP2) contract. If a requirement is within the scope of the ATSP2 contract and a legitimate exception applies to fair opportunity, the benefits of using the contract far outweigh the time and cost associated with placing individual sole-source procurements, which would have resulted in the same outcome.

Audit Response. The Director, DMEA comments are not fully responsive. An occasional determination that one of the statutory exceptions to fair opportunity applies would not necessarily indicate inappropriate use of the ATSP2 contract. However, a pattern of repeated use of these exceptions to fair opportunity as a means to sole-source awards to desired contractors is not appropriate use of the ATSP2 contract. Specifically, for 49 task orders 13 were called competitive with one bid and 36 were sole-source. We question the use of the ATSP2 multiple award contract because there was never any competition (2 or more bids on a task order). Multiple award contracts were designed to ease the acquisition process for competitors, not as a means to sole-source procurements. Contracting officials performed streamlined price analysis on orders issued under the ATSP2 contract and failed to use DCAA audit services. Sole-source awards would have generated a more comprehensive price analysis and most likely used DCAA audit services, thereby, better ensuring a fair and reasonable price. We request that Director, Defense Microelectronics Activity reconsider his comments and provide additional comments in response to the final report.

b. Require the senior contracting official or the Ombudsman at each contracting organization to sign each justification for an

exception, attesting to the validity of the exception, when the contracting organization is below the DoD goal for multiple proposal competition on task orders.

Air Force Comments. The Air Force nonconcurred and stated a key element of acquisition reform is empowering contracting officers to make the right decision. The recommendation dilutes contracting officer authority and slows the acquisition process. Education, training and oversight are the keys to effective implementation of acquisition policy. The Air Force Materiel Command has training road shows on proper use of multiple awards and made oversight of multiple awards a special interest item for Inspector General Offices.

Audit Response. We believe that there was sufficient time for training and oversight since our last audit. For 121 Air Force task orders, 25 were competed with multiple bids (21 percent). The recommendation is structured so that there is no need to request approval for a sole-source task order if an activity is already achieving a goal of 75 percent competition on task orders. We request the Air Force reconsider its comments and provide additional comments in response to the final report.

Defense Finance and Accounting Service Comments. The Director nonconcurred, stating that the process of setting of goals and then review by the ombudsman if the goals are not being met is counter to simplifying contracting processes and institutes an arbitrary task order competition goal.

Audit Response. The Director for Acquisition Services comments were not fully responsive. Our previous audit report revealed that multiple award task orders were not being adequately competed. For 13 task orders at DFAS, only 3 were competed with multiple bids. The proper use of the multiple award approach is still an efficient and effective streamlined instrument and will also likely result in more cost savings. We request the Director for Acquisition Service reconsider his comments and provide additional comments in response to the final report.

Defense Microelectronics Activity. The Director nonconcurred, stating that the current DMEA process already has four levels of review. To add additional administrative burdens to this process would undermine the intention of a streamlined acquisition process. Each activity should have the latitude to develop and implement its own process that meets the requirements set forth in the regulations.

Audit Response. The Director, DMEA comments were not responsive. We agree that the purpose of the multiple award mechanism is to streamline the acquisition process for competitors, however, it is not intended to streamline the process to the extent that competition is avoided. As mentioned earlier for 49 task orders, none were competed and received 2 bids. Although the DMEA may have four levels of review, it would appear from the number of orders issued with an exception to fair opportunity, these controls are not working. We request that Director, Defense Microelectronics Activity reconsider his comments and provide additional comments in response to the final report.

- c. Remind contracting officials FAR 16.505(b)(2)(iii) states that the use of logical follow-on only applies within a multiple award**

contract and that a logical follow-on exception does not apply to prior contracts or subcontracts awarded outside the multiple award contract.

Air Force Comments. The Air Force concurred and stated it will issue an information memorandum to clarify the intent and proper use of the guidance.

Defense Finance and Accounting Service Comments. The Director concurred with reminding contracting officials of the correct definition and application of the logical follow-on waiver in multiple award situations.

Audit Response. The DFAS comments were not fully responsive. Although the Director concurred with the recommendation, he did not propose any action to comply with it. We therefore request that the Director provide additional comments in response to the final report providing proposed action for complying with this recommendation.

Defense Microelectronics Activity Comments. The Director concurred with the recommendation stating that DMEA management provided in-house training to all contracting officers and project engineers that included training on the fair opportunity process, exceptions to fair opportunity, and specifically reviewed the appropriate use of all the exceptions including logical follow-on.

Management Comments Required.

Management comments were not received from the Under Secretary of Defense for Acquisition, Technology, and Logistics; the Assistant Secretary of the Army for Acquisition, Logistics, and Technology; and the Assistant Secretary of the Navy for Research, Development, Acquisition. We request that the:

- Under Secretary of Defense for Acquisition, Technology and Logistics provide comments for Recommendations 1.a., 1.b., 1.c., and 1.d.;
- Army provide comments for Recommendations 2.a., 2.b., and 2.c.;
- Navy provide comments for Recommendations 2.a. and 2.b.; and 2.c.;
- Air Force provide additional comments for Recommendation 2.b.;
- Defense Finance and Accounting Service provide additional comments to Recommendations 2.a., 2.b., and 2.c.; and
- Defense Microelectronics Activity provide additional comments to Recommendations 2.a. and 2.b.

Appendix A. Audit Process

Scope and Methodology

Our review focused on the procurement actions of multiple award contracts issued by 15 DoD contracting organizations for services. The procurement actions reviewed covered FY2000 through FY2001. We examined the statements of work, negotiation memorandums, source selection decisions, and miscellaneous correspondence. Our review covered 423 task orders, valued at \$451.4 million, awarded under 84 multiple award contracts with total ceiling amount of \$9.8 billion. We judgmentally selected 13 contracting organizations that submitted information to OSD. We also selected two Defense activities and reviewed multiple award actions during the same time frame as the OSD data.

Limitations to Scope. The management control program was not reviewed because it was covered in IG, DoD, Audit Report No. 99-116, “DoD Use of Multiple Award Task Order Contracts.” The prior audit determined that DoD contracting activity management controls were not adequate to prevent program officials from directing sources of procurements, and to ensure full competition among contract awardees.

General Accounting Office High-Risk Area. The General Accounting Office has identified several high-risk areas in the DoD. This report provides coverage of the Defense Contract Management high-risk area.

Use of Computer-Processed Data. We did not use computer-processed data to perform this audit.

Audit Type, Dates, and Standards. We performed this economy and efficiency audit from December 2000 through July 2001 in accordance with generally accepted Government auditing standards except that we were unable to obtain an opinion on our system of quality control. The most recent external quality control review was withdrawn on March 15, 2001, and we will undergo a new review.

Contacts During the Audit. We visited or contacted individuals and organizations within DoD. Further details are available upon request.

Prior Coverage

During the past 5 years, the General Accounting Office and the Inspector General, DoD, issued three reports that discussed multiple award contracts.

General Accounting Office

GAO Report Number NSIAD 98-215 (GAO Code 707272), “Acquisition Reform: Multiple-Award Contracting at Six Federal Organizations,” September 30, 1998.

Inspector General, DoD

Inspector General, DoD, Report No. 99-116, “DoD Use of Multiple Award Task Order Contracts,” April 2, 1999.

Inspector General, DoD, Report No. 99-002, “Contracting for Defense Finance and Accounting Service Support,” October 5, 1998.

Appendix B. Summary of Task Order Actions

<u>Locations</u>	<u>Improperly Directed Actions</u>					
	<u>Urgent</u>	<u>Unique</u>	<u>Logical Follow-On</u>	<u>Minimum Guaranteed</u>	<u>Fair Opportunity Documented</u>	<u>Fair Opportunity Undocumented</u>
<u>ARMY</u>						
CECOM ¹	0	0	0	0	0	0
DSSW ²	0	0	0	0	0	50
FORSCOM ³	3	11	0	12	10	0
TACOM ⁴	1	2	0	0	0	0
Army Subtotal	4	13	0	12	10	50
<u>NAVY</u>						
NAVFAC ⁵	0	0	0	0	0	0
NAVSUP ⁶	1	7	18	0	0	0
MSC ⁷	2	11	0	4	0	0
SPAWAR ⁸	0	0	17	6	4 ⁹	0
Navy Subtotal	3	18	35	10	4	0
<u>AIR FORCE</u>						
Brooks AFB	0	0	0	3	42	1
Eglin AFB	0	0	1	0	0	0
SMC ¹⁰	0	0	0	0	18	0
Tinker AFB	0	1	0	1	0	14
Warner Robins AFB	0	0	7	0	2	0
Air Force Subtotal	0	1	8	4	62	15
<u>DEFENSE ACTIVITIES</u>						
DFAS ¹¹	0	0	2	0	0	7
DMEA ¹²	0	0	0	6	0	0
Defense Activities Subtotal	0	0	2	6	0	7
TOTAL:	7	32	45	32	76	72

Note: See footnotes at the end of appendix.

<u>Locations</u>	<u>Properly Supported Actions</u>				<u>Total Actions</u>	
	<u>Competitive One Bid</u>	<u>Competitive Multiple Bid Other</u>	<u>Low</u>	<u>Exceptions</u>	<u>Reviewed</u>	<u>Sole-Source Directed¹³</u>
<u>ARMY</u>						
CECOM ¹	5	4	12	1	22	1
DSSW ²	0	0	0	0	50	50
FORSCOM ³	0	3	1	2	42	38
TACOM ⁴	2	6	9	2	22	5
Army Subtotal	7	13	22	5	136	94
<u>NAVY</u>						
NAVFAC ⁵	0	0	4	0	4	0
NAVSUP ⁶	8	6	7	4	51	30
MSC ⁷	0	0	0	0	17	17
SPAWAR ⁸	2	0	2	1	32	28
Navy Subtotal	10	6	13	5	104	75
<u>AIR FORCE</u>						
Brooks AFB	0	0	1	0	47	46
Eglin AFB	5	11	4	0	21 ¹⁴	1
SMC ¹⁰	0	2	3	0	23 ¹⁵	18
Tinker AFB	1	1	1	0	19	16
Warner Robins AFB	0	0	2	0	11	9
Air Force Subtotal	6	14	11	0	121	90
<u>DEFENSE ACTIVITIES</u>						
DFAS ¹¹	1	0	3	0	13	9
DMEA ¹²	13	0	0	30	49	36
Defense Activities Subtotal	14	0	3	30	62	45
TOTAL:	37	33	49	40	423	304

¹. U.S. Army Communications and Electronics Command

². Defense Supply Services Washington

³. U.S. Army Forces Command

⁴. U.S. Army Tank Automotive and Armaments Command

⁵. Naval Facilities Engineering Command

⁶. Naval Supply Systems Command

⁷. Military Sealift Command

⁸. Space and Naval Warfare Systems Command

⁹. Competitive one-bids but there was no true expectation of receiving more than one-bid.

¹⁰. Space and Missile Systems Center

¹¹. Defense Finance and Accounting Service

¹². Defense MicroElectronics Activity

¹³. This column includes invalid awards and valid exceptions. These actions were directed or sole source.

¹⁴. Data was collected on 71 orders with a full review done on 21 orders and a limited review done on 50 orders. For this reason, only the 21 orders were included in the 423.

¹⁵. Data was collected on 64 orders with a full review done on 23 orders and a limited review done on 41 orders. For this reason, only the 23 orders were included in the 423.

Appendix C. Report Distribution

Office of the Secretary of Defense

Under Secretary of Defense for Acquisition, Technology, and Logistics
Director, Defense Procurement
Under Secretary of Defense (Comptroller)
Deputy Chief Financial Officer
Deputy Comptroller (Program/Budget)

Department of the Army

Assistant Secretary of the Army (Acquisition, Logistics, and Technology)
Assistant Secretary of the Army (Financial Management and Comptroller)
Auditor General, Department of the Army

Department of the Navy

Assistant Secretary of the Navy (Research, Development, and Acquisition)
Assistant Secretary of the Navy (Financial Management and Comptroller)
Naval Inspector General
Auditor General, Department of the Navy

Department of the Air Force

Assistant Secretary of the Air Force (Acquisition)
Assistant Secretary of the Air Force (Financial Management and Comptroller)
Auditor General, Department of the Air Force

Other Defense Organizations

Director, Defense Contract Audit Agency
Director, Defense Finance and Accounting Service
Director, Defense Information Systems Agency
Director, Defense Logistics Agency
Director, Defense MicroElectronics Activity

Non-Defense Federal Organization

Office of Management and Budget

Congressional Committees and Subcommittees, Chairman and Ranking Minority Member

Senate Committee on Appropriations

Senate Subcommittee on Defense, Committee on Appropriations

Senate Committee on Armed Services

Senate Committee on Governmental Affairs

House Committee on Appropriations

House Subcommittee on Defense, Committee on Appropriations

House Committee on Armed Services

House Committee on Government Reform

House Subcommittee on Government Efficiency, Financial Management, and Intergovernmental Relations, Committee on Government Reform

House Subcommittee on National Security, Veterans Affairs, and International Relations, Committee on Government Reform

House Subcommittee on Technology and Procurement Policy, Committee on Government Reform

DEPARTMENT OF THE AIR FORCE



Office Of The Assistant Secretary

DEPARTMENT OF THE AIR FORCE
WASHINGTON DC

SEP 17 2001

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL FOR AUDITING, OFFICE
OF THE INSPECTOR GENERAL, DEPARTMENT OF DEFENSE

FROM: SAF/AQ
1060 Air Force Pentagon
Washington, DC 20330-1060

SUBJECT: Audit Report on Multiple Award Contracts for Services
(Project No. 2001CF-0057) (Your Memo, 10 Aug 2001)

The attached comments are in reply to your memorandum requesting the Assistant Secretary of the Air Force (Financial Management and Comptroller) provide Air Force comments on subject draft report. Since the award of task order contracts is an acquisition policy issue, it is appropriate that the Air Force's response to this draft audit report come from the acquisition community.

We concur with your assessment that greater awareness and emphasis is needed to ensure policy guidance is clearly understood on multiple award contracts. We will issue an information memorandum to field contracting officers per your recommendations. However, we do not concur with your recommendation to add more levels of approval for justifying exceptions under FAR Part 16.504. This would be contrary to our ongoing efforts to streamline the acquisition process and empower our work force to make sound business decisions.

Our action officer for this matter is Maj Scott Calisti, SAF/AQCP, (703) 588-7072. Thank you for the opportunity to comment on this draft audit report.

DARLEEN A. DRUYUN
Principal Deputy Assistant Secretary
(Acquisition & Management)

Attachment:
AF Comments

cc:
SAF/AQXA
SAF/FMPF

**Air Force Comments
On
Audit Report, Multiple Award Contracts for Services,
Project Code D2001CF-0057**

We recommend that the Assistant Secretary of the Air Force (Acquisition):

Recommendation A: Instruct contracting officials that adequate planning requires an assessment that a multiple award situation is suitable for the work under consideration. Work that includes proprietary rights or is otherwise so unique as to likely result in a pattern of unique exceptions or one bid actions would not meet these criteria. (ECD: 15 Oct 01)

Concur. FAR 16.504(c)(1)(ii)(A)(1-4) discusses the need for acquisition planning, avoiding situations giving contractor's exclusive access to one area of the work and to consider the need to maintain competition throughout contract performance. SAF/AQC will publish an information memorandum to the field outlining the importance of this policy guidance.

Recommendation B: Require the senior contracting official or the Ombudsman at each contracting organization to sign each justification for an exception, attesting to exception's validity when the activity is below the DoD goal for multiple proposals on task orders.

Non-concur. A key element of acquisition reform is empowering our contracting officers to use their judgement to make the right business decisions. The ordering guidance at FAR 16.505 already directs them to establish fair ordering procedures. Requiring higher level approvals of the "exemption of sources" slows the acquisition process, dilutes the authority of the contracting officer, and stifles the momentum of acquisition reform and streamlining.

However, education, training and oversight are key to the effective implementation of acquisition policy. Air Force Materiel Command (AFMC), owner of the task orders audited, has taken notice. In FY 2000 they established a Special Interest Item (SII) for all AFMC logistic and product center IGs. The goal of the SII is to review services contract procedures, particularly fair opportunity and multiple awards. In addition, during AFMC's recent training roadshow they conducted emphasis training on fair opportunity, ensuring order placement procedures are followed and documented properly. We are confident that their continued efforts will consistently improve our processes without the burden of additional justifications and higher approval levels.

Recommendation C: FAR 16.505(b)(2)(iii) states that the use of logical follow-on refers only within multi-award contracts and does not apply to previous contracts awarded outside the multi-award vehicle. (ECD - 15 Oct 01)

Concur. SAF/AQC will issue an information memorandum clarifying the intent and proper use of this guidance.

DEFENSE FINANCE AND ACCOUNTING SERVICE COMMENTS



DEFENSE FINANCE AND ACCOUNTING SERVICE

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DFAS-QP

SEP 12 2001

MEMORANDUM FOR DIRECTOR CONTRACT MANAGEMENT, INSPECTOR GENERAL


SUBJECT: Audit Report on Multiple Award Contracts for Services (Project No.
D2001CF-0057)

We have reviewed the draft report and are submitting comments as requested. Overall we concur that documentation and procedures for awarding task orders on Multiple Award contracts need improvement. Our efforts on more recent task orders demonstrate we have already improved our processes, as evidenced by the results of the review, where the FY00 task orders had been correctly competed and all problems identified were with earlier contracts awarded in FY98.

Three specific recommendations were made in the report and we concur with instructing contracting officials further that they must do adequate acquisition planning to assess that a multiple award situation is appropriate for the work under consideration. We also concur with reminding them of the correct definition and application of the logical follow-on waiver in multiple award situations.

We do not concur with the recommendation to set a goal of competing 75% of the task orders and the process whereby the agency Ombudsman must review and approve all logical follow on waivers if the goal is not being met. This sets up a reporting and review process that is counter to simplifying contracting processes and institutes an arbitrary task order competition goal. Many of the areas that the report targeted for improvement could be addressed with additional emphasis on correct procedures and training.

If you have any additional questions, please contact me, or Janet Carlson, at (703) 607-1031.


Gary W. Maxam
Director for Acquisition Services

DEFENSE MICROELECTRONICS ACTIVITY COMMENTS



DEFENSE MICROELECTRONICS ACTIVITY

4234 54th STREET
MC CLELLAN, CALIFORNIA 95652-2100

30 Aug 01

DMEA/ME

MEMORANDUM FOR: DoD Inspector General Contract Management Directorate
(Richard B. Jolliffe)

SUBJECT: Defense Microelectronics Activity (DMEA) Response to DoD Inspector
General IG Report D2001CF-0057 (Multiple Award Contracts for Services)

We are pleased to provide the attached comments in response to the DoD IG
Audit Report on the DoD Use of Multiple Award Contracts for Services. If you have any
questions concerning the response please feel free to contact Kellie M. Valdez, Chief,
Microelectronics Contracting Division at (916) 231-1523 or email
Valdez@dmea.osd.mil.

A handwritten signature in black ink, appearing to read "Ted Glum".

TED GLUM
Director
Defense Microelectronics Activity

Attachment:
DMEAs response

Response to Recommendation. Listed below are the recommendations of the DoD Inspector General Report and DMEA's response to the recommendations.

-Recommendation 2 – We recommend that the Director, Defense Micro Electronics Activity:

- a. Instruct contracting officials that adequate planning requires assessment that a multiple award situation is suitable for the work under consideration. Work that includes proprietary rights or is otherwise so unique as to likely result in a pattern of unique exceptions or one-bid actions would not meet this criteria.
- b. Require the senior contracting official or the Ombudsman at each contracting organization to sign each justification for an exception, attesting to the validity of the exception, when the contracting organization is below the DoD goal for multiple proposal competition on task orders.
- c. Remind contracting officials FAR 16.505(b)(2)(iii) states that the use of logical follow on only applies within a multiple award contract and that a logical follow on exception does not apply to prior contracts or subcontracts awarded outside the multiple award contract.

DMEA response 2.a. –DMEA does not concur with this recommendation. Although all our contractors are capable of performing all work on all contracts, all contractors do not have the same level of expertise in all areas. DMEA's process is in accordance with FAR 16.505(b) that requires all potential awardees must be given a fair opportunity to be considered unless a statutory exception applies. The fact that DMEA has made written determinations that one of the statutory exceptions apply, certainly does not negate the validity of utilizing the ATSP2 contract. The proper use of a statutory exception does not indicate that adequate planning was not accomplished nor does it demonstrate that individual sole source procurements should be accomplished instead of utilizing a multiple award contract. On the contrary, if a requirement is within scope of the ATSP2 contract and a legitimate exception applies to fair opportunity, the benefits of utilizing this contract far outweigh the time and cost associated with placing individual sole source procurements, which would have resulted in the same outcome.

DMEA response 2.b. – DMEA does not concur with this recommendation. The current process that is in place at DMEA already requires four levels of review. The Project Engineer (PE) explains in detail why an exception to fair opportunity applies, the PE's manager coordinates on the exception, further review and coordination is accomplished in our Program Control Office and final approval is given by the Contracting Officer. The use of exceptions to fair opportunity is taken seriously, to add additional

administrative burdens to this process would undermine the purpose of what is intended to be a streamlined acquisition process. Each activity should have the latitude to develop and implement their own process that meets the requirements set forth in the regulations.

DMEA does not concur that 6 actions were improperly directed actions, to meet minimum guarantee as cited on Page 10 and 20 of the report. The DoD Financial Management Regulation (DoD 7000.14-R), Volume 3, Chapter 8, Paragraph 080404 states, "In the case of indefinite quantity contracts for supplies or services that specify delivery of minimum quantities during a given period, an obligation must be recorded upon execution of the contract for the cost of the minimum quantity specified." The Army Fiscal Law Course cited the following legal cases and Comptroller General rulings as the basis for the requirements for the government to buy the minimum quantity specified on a contract: *Tennessee Soap v. United States*, 130 Ct. Cl. 154 (1954); *Federal Elec. Corp. ASBCA No. 11726*, 68-1 BCA P. 6,834; and *Federal Elec. Corp.*, B-160560, Sept. 15, 1967, 47 Comp. Gen 155. Until the DoD FMR is changed the minimum quantity must be awarded at the time the contract is issued. DMEA would request that the chart on page 20 be changed to eliminate the Minimum Guaranteed column citing that those actions have been improperly directed actions.

DMEA response 2.c. – DMEA concurs. On July 12, 2001 DMEA management provided in-house training to all Contracting Officers and Project Engineers that included training on the fair opportunity process, exceptions to fair opportunity and specifically reviewed the appropriate use of all the exceptions including logical follow on.

Audit Team Members

The Contract Management Directorate, Office of the Assistant Inspector General for Auditing, DoD, prepared this report. Personnel of the Office of the Inspector General, DoD, who contributed to the report are listed below.

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